

stalking is either: (1) that the victim was a minor under 16 years of age; (2) that the offender was subject to an injunction or other court-imposed prohibition of conduct toward the victim or the victim's property; or (3) that the offender makes a credible threat with the intent to place the victim in reasonable fear of death or bodily injury.

The constitutionality of s. 784.048, F.S., has been upheld by the Florida Supreme Court. In *Bouters v. State*, 659 So.2d 235 (Fla. 1995), the Court found that the conduct prohibited by the stalking statute is clearly criminal and not protected by the First Amendment right of free speech, and that the statute is not vague or overbroad in the type of conduct it prohibits. The amendment to specifically include cyberstalking would not change the constitutional analysis.

Department of Corrections statistics for Fiscal Year 2001-2002 reflect 90 prison admissions and 330 persons placed on felony supervision following convictions for violation of the stalking statute.

B. Information Service Technology Development Task Force

In June 1999, the Legislature created the Information Service Technology Development Task Force. The task force's mission was to focus on the development of state policies that would enable Florida to compete successfully in the information age.

The task force's eLaws Civil and Criminal Subcommittee noted that most of Florida's laws were created before the rapid proliferation of Internet technology. The subcommittee recommended the creation or amendment of certain laws in order to thwart possible use of the Internet to bypass the intent of state law and to continue the law's protections into the Internet world. One recommendation was to amend s. 784.048, F.S., to specifically include cyberstalking. Common examples of cyberstalking include the sending of hateful, obscene or threatening e-mail, harassment in Internet chat rooms, and the sending of computer viruses. The subcommittee found that cyberstalking can have the same effect as more traditional forms of stalking, and that stalking in any form can escalate to more direct actions such as threats or physical attack.

The task force found that most states have made stalking illegal and approximately half have laws specifically prohibiting cyberstalking. Florida's stalking law makes it illegal to "engage in a course of conduct directed at a specific person that causes substantial emotional distress in such person and serves no legitimate purpose." Most forms of cyberstalking would probably fit within the current definition, but specific inclusion of the term eliminates any doubt.

III. Effect of Proposed Changes:

This bill adds cyberstalking to "following" and "harassing" as prohibited acts under s. 784.048, F.S. As defined in the bill, cyberstalk means to engage in a course of conduct to communicate, or cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

The bill also amends s. 784.048(3), F.S., to expand the scope of aggravated stalking to include threats made against close family members of the person to whom the harassment is directed.

Current law embraces threats made directly against the victim. The bill would define aggravated stalking to include credible threats made by a stalker with the intent to place a person in reasonable fear of his or her own death or bodily injury, or the death or bodily injury of the person's child, sibling, spouse, parent, or dependant.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There could be an impact if cases are prosecuted that could not be prosecuted under the existing law. This impact would likely be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.